

U.S. DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket No. DOT-OST-2012-0028

Submission of U.S. Carrier and Airport Tarmac Delay Contingency Plans to Department of Transportation for Approval

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FAA Modernization and Reform Act of 2012 requires covered U.S. carriers and U.S. airports to submit to the Secretary of Transportation for review and approval tarmac delay contingency plans on or before May 14, 2012. This document provides information on how covered U.S. carriers and airports can submit the required plans to the U.S. Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) through the World Wide Web, and addresses frequently asked questions about the applicability of the statutory provisions.

FOR FURTHER INFORMATION OR TO CONTACT: Livaughn Chapman, Jr., or Laura Jennings, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., W-96-429, Washington, DC 20590-0001; Phone: (202) 366-9342; Fax: (202) 366-7152; Email: Livaughn.Chapman@dot.gov, or Laura.Jennings@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2012, President Obama signed the FAA Modernization and Reform Act of 2012 (the "Act") into law. Among other things, the Act requires U.S. carriers that operate

scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012. The Act also requires each covered carrier and airport to ensure public access to its plan after DOT approval by posting the plan on its website.

The requirements of the Act do not conflict with the Department's existing tarmac delay rule (14 CFR Part 259). The Act also permits the Department to establish, as necessary, minimum standards for contingency plans. As such, the specific requirements of Part 259 remain in effect for U.S. and foreign air carriers.

Under the Act and existing DOT rules, U.S. carrier contingency plans must contain a provision that a passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay (3 hours for domestic flights and 4 hours for international flights) at each large hub, medium hub, small hub, or non-hub U.S. airport at which they operate scheduled or public charter air service, with the following exceptions: (1) where an air traffic controller with authority over the aircraft advises the pilot in command that permitting a passenger to deplane would significantly disrupt airport operations; or (2) where the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The deplaning option also must be offered to a passenger if the flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport. Under the Act, U.S. carrier contingency plans must also contain a description of how the carrier will: (1) provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers onboard an aircraft when the departure of a flight is delayed or disembarkation of passengers is delayed; and (2) share

facilities and make gates available at the airport in an emergency. Existing DOT rules require carriers to provide assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable), U.S. Customs and Border Protection and the Transportation Security Administration at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carriers serve, as well as their regular U.S. diversion airports. It should be noted that, unlike the Act, DOT rules do not currently require sharing of facilities and gates or comfortable cabin temperature. The DOT rules will be modified in the future to reflect these new requirements as well as the new requirements relating to airports.

Under the Act, airport contingency plans must contain a description of how the airport operator, to the maximum extent practicable, will: (1) provide for the deplanement of passengers following excessive tarmac delays; (2) provide for the sharing of facilities and make gates available at the airport in an emergency; and (3) provide a sterile area following excessive tarmac delays for passengers who have not yet cleared U.S. Customs and Border Protection.

The Enforcement Office has established a web address for the filing of contingency plans at <http://filingtarmacdelayplan.dot.gov>, similar to the Department's current disability complaint reporting system, to enable covered U.S. airlines and airports to easily submit their required plans through the World Wide Web. Carriers must use this system to submit their plans rather than sending the plans to the Department by mail or email. In order to use the tarmac delay plan filing system, covered U.S. airlines and airports will need to register on the website before they can upload their plans to the system. To register, click on the hyperlink titled "Create Account to Submit Tarmac Delay Contingency Plan" in the blue sign-in box on the home page, select the registration type (i.e., Airline or Airport), select your airline or airport name from the dropdown

list, click continue, and then simply fill in and submit the following registration information: Representative Name; Representative Title; Telephone Number; and Email address. Carriers and airports may also choose to enter additional contact information (i.e., address, city state, zip and country), and any comments. If your airline or airport name is not listed in the dropdown list, click the “CLICK HERE” hyperlink under the dropdown list, and on the landing page, select the registration type (i.e., Airline or Airport), enter the Airline/Airport Code and Name in the appropriate fields, and click the “Submit” button. Airlines/airports will then be able to fill in and submit the registration information.

Each airline/airport representative will be assigned a unique username and password after DOT has verified the authenticity of the registered airline/airport representative, which may take up to three days. This step is necessary to ensure that only authorized users can submit information. We encourage each covered airline/airport to register with the website as soon as possible so that the airline/airport representative receives a username and password from DOT in advance of May 14, 2012, the date by which covered U.S. airlines/airports are required to submit their plans.

Once an airline/airport representative receives a username and password from DOT, that representative will be able to access the website, upload their plan and submit it for approval electronically. Airline/airport representatives may also change their username or password and modify their contact information. To change a username or password, the representative would login with the given username and password, mouse over the “Account Management” tab in the blue bar at the top of the screen, and then click on the “Change Password” link. Similarly, an airline/airport representative could modify his/her contact information by clicking on the “Update Account” link in the “Account Management” tab.

After logging into the system, clicking on the “Submit New Plan” button will take the airline/airport representative to a screen where he/she can begin the contingency plan submission process. At this point, an airline/airport representative has the option of either choosing the system-generated title for the plan or entering his/her own title for the plan in the “Submission Title” field. Clicking on the “Create New Plan Submission” button will then take the airline/airport representative to a screen where he/she can upload the plan document, enter comments and submit the plan to DOT for approval. To upload a tarmac delay plan document, enter a title for the document in the “Document Title” field, then click the “Browse” button in the “File” field, select the appropriate file, and click “Add New Document” to upload the selected file into the system. Airlines/airports may upload multiple documents. When an airline/airport representative finishes uploading his/her document(s), he/she should check the certification box after reading and acknowledging the legal certification statement prior to clicking the “Submit for Approval” button. After submission, the documents will be forwarded to DOT for review.

If, after submitting a plan for approval, an airline or airport determines that it is necessary to remove their plan and submit a replacement plan for approval, the airline/airport representative should resubmit their replacement plan under the original Submission Title by clicking “Resubmit This Entry” after logging back into the system and then upload the revised plan using the uploading procedures noted above. Similarly, if after submission DOT requires changes to an airline/airport’s plan, the airline/airport representative should make the requisite changes and submit the revised plan under the original Submission Title by clicking “Resubmit This Entry.”

Frequently Asked Questions

Since President Obama signed the FAA Modernization and Reform Act of 2012 into law on February 14, 2012, a number of airline and airport representatives have asked for clarification or interpretation of the text of the Act. These clarifications and interpretations have been disseminated primarily through informal conversations or emails between DOT staff and individual airport or airline representatives. The Department believes that the guidance provided to these airline and airport representatives may also be of interest to other members of the public. To ensure that this guidance will be more accessible to the public, and to ensure that the tarmac delay contingency plan submission requirements of the Act will be more readily understandable, we are including frequently asked questions and DOT responses below regarding the tarmac delay contingency plan submission requirements of the Act.

1. Question: Which airports must submit tarmac delay contingency plans for review and approval?

Answer: The Act requires operators of large hub, medium hub, small hub, or non-hub commercial U.S. airports, to submit a contingency plan for lengthy tarmac delays to the Secretary of Transportation for review and approval. In defining the hub size of an airport, the Department uses the airport-specific thresholds published by the Department's Bureau of Transportation Statistics (BTS). A large hub airport means an airport accounting for at least 1.00 percent of the total enplanements in the United States. A medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States. A small hub airport means an airport accounting for at least 0.05%, but less than

0.25% of the total enplanements in the United States. A non-hub airport means an airport accounting for enplanements of more than 10,000 passengers but less than 0.05% of the total enplanements in the United States. A list of airport information for calendar year 2010 (the latest available data) is available on the FAA's website at

http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy10_primary_enplanements.pdf.

2. Question: Does DOT have a sample of an approved tarmac delay contingency plan or a model tarmac delay contingency plan that airports can use as a guide in developing their own plan?

Answer: Carriers and airports are directed to the model contingency planning document, titled "Development of Contingency Plans for Lengthy Airline On-Board Ground Delays," that was developed by the Department's National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays for contingency planning guidance. See Docket No. DOT-OST-2007-0108-0124. This document can also be found at

<http://airconsumer.dot.gov/publications/TarmacTFModelContingencyPlanningDocument.pdf>.

We also understand that Airports Council International – North America and the American Association of Airport Executives have developed a template that airports can use as a reference. Airports can contact those organizations for further information. The Airport Cooperative Research Program (ACRP) has developed some guidance materials in this area as well. Those materials can be found at <http://www.trb.org/ACRP/Blurbs/166569.aspx>. Due to the varying nature and requirements of each airport, however, DOT does not plan to publish a sample of an

approved tarmac delay contingency plan. Covered airlines and airports are required to post a copy of their approved contingency plan on their website.

3. Question: Many airports have developed comprehensive irregular operations plans that deal with issues outside of the requirements of the Act. Should carriers submit those plans?

Answer: Airports are free to submit plans that cover more than the statutory requirements of the Act; however, they are not required to do so. The Department's review of airport contingency plans will concentrate on the statutory requirements for such plans.

4. Question: Are covered U.S. carriers required to submit separate airport-specific, station-level contingency plans for each airport that they serve?

Answer: The Act requires each covered U.S. carrier to submit a plan for each covered airport but does not prohibit a carrier from doing so through the submission of one overarching tarmac delay plan covering all of the carrier's operations that contains the requisite assurances required by the statute. Of course, airlines are also free to submit separate airport-specific, station-level plans if they prefer.

5. Question: Does the requirement for air carriers to submit tarmac delay contingency plans apply to foreign flag carriers?

Answer: No. The statutory requirement for air carriers to submit tarmac delay contingency plans does not apply to foreign flag carriers. The statutory requirement for air carriers to submit tarmac delay contingency plans applies only to U.S. air carriers that operate at least one aircraft with a design seat capacity of 30 or more passenger seats.

ISSUED THIS 2nd DAY OF MAY, 2012, AT WASHINGTON D.C.

Blane A. Workie
Deputy Assistant General Counsel for
Aviation Enforcement and Proceedings
U.S. Department of Transportation